

## **Remarks**

### **Status of the Application**

Prior to entry of this amendment, claims 30-34, 40 and 44-51 were pending. The Office Action mailed May 9, 2011 (the "Office Action") rejected claims 30-34, 39-40 and 44-51 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, and rejected claims 30-34, 40 and 44-51 under § 103(a) as being unpatentable over US 6,169,894 to McCormick et al. ("McCormick"), in view of US 6246430 to Peters et al. ("Peters").

This paper amends claims 30 and 40. No claims have been added or canceled. Hence, after entry of this paper, claims 30-34, 40 and 44-51 will stand pending for examination. Claims 30 and 40 are independent claims.

### **Claim Amendments**

Claims 30 and 40 have been amended to correct a typographical error introduced by a prior amendment.

### **Rejections under 35 U.S.C. § 112**

Claims 30-34, 39-40 and 44-51 stand rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action asserts that claims 30 and 40 recitation "first request to a selected media program .... a second request to a selected media program .... the selected media program" render the claims indefinite. As noted above, claims 30 and 40 have been amended, and now all references to a "selected media program" (subsequent to the first such reference) refer to "the selected media program," indicating that the first and second handsets both request the same selected me

### **Rejections under 35 U.S.C. § 103**

Claims 30-34, 40 and 44-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McCormick, in view of Peters. These rejections are respectfully traversed.

because the Office Action has not demonstrated that the cited combination either teaches or suggests each element of any rejected claim.

Consider, for example, claim 30, which recites, inter alia,

- "determining whether the second wireless handset is located within the first cell site coverage area;" and
- "transmitting the selected media program to the second wireless handset, based on a determination of whether the second wireless handset is located within the first cell site coverage area." (emphasis added)

Neither McCormick nor Peters discloses or suggests this combination of features. The Office relies on column 6, lines 31-33 and 40-50 as collectively disclosing these features. The relevant portion of McCormick is reproduced below:

Next, in step 305, the local cell site servicing the particular mobile unit, such as local cell site 1, receives the feature code from the mobile unit 140 and transmits the feature code 30 to the appropriate switch (MSC 110). In step 310, the switch then determines that the feature code is a request for information over a broadcast channel, and directs the local cell site 1 to connect a mobile (radio) channel A (such as a cellular frequency of an analog system, a time slot of a TDMA system, or a code of a CDMA system) of a transceiver 120 to trunk B, in which the trunk B carries the requested broadcast channel. For example, for an analog system, the mobile (radio or cellular) channel utilized by the local cell site 1 as a broadcast channel is typically at a particular or selected frequency at any given time, to which the mobile unit 140 will be directed to tune, and may be carried by one or more transceivers 120 within the particular cell site, with similar directives for other systems such as TDMA or CDMA. To carry the requested information, that designated mobile broadcast channel (frequency, time slot or code assignment) is connected to the appropriate trunk 260, in this case trunk B, to provide the requested information. In addition, depending upon usage and other matters, the particular channel assignment may be variable, or may be activated or deactivated, at any given time, as discussed below.

McCormick, col. 6, lines 27-51 (emphasized to indicate portions cited by Office Action).

Nothing in the material quoted above discloses or suggests either determining whether a second wireless handset is located within the same coverage area as a first wireless handset, as

required by claim 30. Instead, the only determination even suggested by the cited passage of McCormick is a determination that a feature code is a request for information over a broadcast channel. Such a determination has nothing to do with determining that a second wireless handset (which requests the same media program as a first handset) is in the same cell site coverage area as the first handset, which is the functionality required by claim 30.

In fact, the switch of McCormick need make no determination at all about the cell site coverage area of the requesting handset. This is because McCormick expressly discloses (as indicated in the quoted material above) that the switch receives the request directly from the local cell site, and it subsequently directs the same cell site to connect the radio channel to a trunk carrying the program. Thus, not only does McCormick fail to disclose any determination that two handsets requesting the same program are within the same cell site coverage area, McCormick's system has no need of any such determination, so it would not be obvious to one skilled in the art to modify McCormick's system to operate as recited by claim 30. For at least this reason, claim 30 is allowable over the combination of McCormick and Peters.

Moreover, even assuming McCormick's system did perform the recited determination (which it does not, as noted above), nothing in McCormick even suggests that the transmission of a selected media program is based on the determination of whether the second wireless handset is located within the same cell site coverage area as the first handset, as claim 30 also requires. Once again, the only determination disclosed by the cited portion of McCormick is that the feature code is a request for information; at that point, the switch instructs the cell site to connect the radio channel used by the handset with the trunk carrying the information. This cannot even remotely be construed as reading on the functionality recited by claim 30.

For at least this additional reason, claim 30 is allowable over the combination of McCormick and Peters.

Claim 40, which recites similar features, is allowable over the combination of McCormick and Peters for at least similar reasons. Dependent claims 31-34 and 44-51 are allowable at least by virtue of their dependence from allowable base claims.

### Conclusion

Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This paper constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date: 2011-08-05

/Chad E. King/  
Chad E. King, #44,187  
Swanson & Bratschun, L.L.C.  
8210 Southpark Terrace  
Littleton, CO 80120  
Telephone: (303) 268-0066  
Facsimile: (303) 268-0065

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